

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Civil Action No. 3:19-CV-226-RJC-DSC

LISA CAROL RUDISILL,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS,

Defendant.

DEFENDANT'S REPLY TO
PLAINTIFF'S RESPONSE TO THE
MOTION TO DISMISS

Defendant North Carolina State Board of Elections respectfully submits this reply to Plaintiff's Response ("Pl.'s Resp." (Doc. 9)) in opposition to the State Board's Motion to Dismiss (Doc. 7, 8). The State Board wishes to respond only to the Plaintiff's assertion that she has also sued the Governor of North Carolina, and that her case should therefore proceed even if the State Board is dismissed. *See* Pl.'s Resp. 3.

The Governor has not been brought into this case. The caption of Plaintiff's Complaint lists only "North Carolina Board of Elections" as "Defendant(s)." Compl. 1 (Doc. 3). Under the heading for "PARTIES," Plaintiff listed only "North Carolina State Board of Elections." *Id.* Even though there are designated spaces on the Complaint's form to list two additional defendants, Plaintiff listed no other defendants. *See id.* at 2. When discussing the "NATURE OF THE CASE," and the "CAUSE OF ACTION," Plaintiff complains only of alleged violations by the State Board. *Id.* at 2–3. In her "REQUEST FOR RELIEF," Plaintiff seeks an injunction against the conduct of an

election and an election-related investigation, which would constitute relief that only the State Board could provide. *Id.* at 5.

In an attachment to her Complaint, Plaintiff provides further narrative description of her claims. *See id.* at 6–7. In this document, she does state that her Complaint is “AGAINST: NORTH CAROLINA BOARD OF ELECTIONS & GOVERNOR ROY COOPER.” *Id.* at 6. This one reference is contradicted, of course, by the omission of the Governor in her list of defendants, in her case caption, and in her description of her claims and relief.

The docket for this case also includes only one defendant. And as the docket makes clear, only the State Board has been served with a summons in this case. *See Doc. 6.* Moreover, the undersigned counsel understands that the Governor, in fact, has *not* been served with a summons or complaint.

In sum, the Governor is not a defendant in this case.¹ The State Board therefore requests dismissal of Plaintiff’s Complaint in its entirety.

The State Board otherwise rests on the arguments made in its brief supporting the Motion to Dismiss (Doc. 8).

¹ Even if Plaintiff had made the Governor a defendant, her only allegation against him is that he appointed members to the State Board of Elections, Compl. at 6, which a court order and N.C. Session Law 2018-146 required him to do, *see Doc. 8-3; Doc. 8-4, sec. 3.2.(a)*. Although the undersigned does not represent the Governor, it bears noting that the Governor’s past official actions are likely subject to Eleventh Amendment immunity. *See Republic of Paraguay v. Allen*, 134 F.3d 622, 628 (4th Cir. 1998); *Jemsek v. N.C. Med. Bd.*, No. 5:16-CV-59-D, 2017 WL 696721, at *6 (E.D.N.C. Feb. 21, 2017), *aff’d*, 697 F. App’x 234 (4th Cir. 2017). And as discussed in the State Board’s brief on the motion to dismiss, the allegations concerning these appointments fail to state a claim, in any event. Doc. 8 at 19–20.

CONCLUSION

Defendant North Carolina State Board of Elections respectfully requests that the Court grant its Motion to Dismiss the Complaint in its entirety. Because of the numerous independent grounds for dismissal (*see* Doc. 8), amendment of the Complaint would be futile. Defendant therefore requests dismissal with prejudice.

This the 27th day of June, 2019.

JOSHUA H. STEIN
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing
DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO THE MOTION TO
DISMISS with the Clerk of Court using the CM/ECF system and have placed a copy in
the U.S. Mail, postage prepaid, to the plaintiff who is a non-CM/ECF user, as follows:

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This the 27th day of June, 2019.

/s/ Paul M. Cox
Paul M. Cox
Special Deputy Attorney General